

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

SECURUS TECHNOLOGIES, INC. MOTION FOR EXTENSION

Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. § 1.46, respectfully moves for an extension of time to submit annual reports regarding its Inmate Calling Services (“ICS”) as required by new Rule 64.6060, 47 C.F.R. § 64.6060 (the “Reporting Rule”). This extension is warranted under the plain language of Paragraph 268 of the *Second Inmate Rate Order*¹ and because so much of the Reporting Rule relies on aspects of the *Second Inmate Rate Order* that are under review in the Court of Appeals.

BACKGROUND

Rule 64.6060 states:

- a) Providers must submit a report to the Commission, by April 1st of each year, regarding interstate, intrastate, and international Inmate Calling Services for the prior calendar year. The report shall be categorized both by facility type and size and shall contain:
 - 1) Current interstate, intrastate, and international rates for Inmate Calling Services;
 - 2) Current Ancillary Service Charge amounts and the instances of use of each;
 - 3) The Monthly amount of each Site Commission paid;
 - 4) Minutes of use, per-minute rates and ancillary service charges for video visitation services;
 - 5) The number of TTY-based Inmate Calling Services calls provided per

¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136 (rel. Nov. 5, 2015).

facility during the reporting period;

- 6) The number of dropped calls the reporting Provider experienced with TTY-based calls; and
- 7) The number of complaints that the reporting Provider received related to *e.g.*, dropped calls, poor call quality and the number of incidences of each by TTY and TRS users.

- (b) An officer or director of the reporting Provider must certify that the reported information and data are accurate and complete to the best of his or her knowledge, information, and belief.

47 C.F.R. § 64.6060.

The Reporting Rule required approval from the Office of Management and Budget (“OMB”). *Second Inmate Rate Order* ¶ 336. OMB approved the reporting requirements on January 9, 2017.² The Wireline Competition Bureau (the “Bureau”), on its own motion, issued a Public Notice stating that the first annual reports are due June 1, 2017, for calendar year 2016.³

I. THE COMMISSION HELD THAT THE FIRST SET OF ANNUAL REPORTS WOULD COVER THE CALENDAR YEAR FOLLOWING OMB APPROVAL AND BE DUE APRIL 1 OF THE NEXT YEAR

Rule 64.6060 states that ICS providers must file annual reports each April 1, but does not specify when the time period for the first report begins. For that we look to Paragraph 268 of the *Order*,⁴ which states:

Each annual report shall be submitted to the Commission by April 1st of each year, regarding the providers’ interstate, international and intrastate ICS. The first annual report will be due after the Commission publishes Office of Management and Budget (OMB) approval pursuant to the Ordering Clauses below. **If for example, OMB approval is granted in 2016 then the first annual report and certification (as discussed below) will be due on April 1,**

² *Rates for Interstate Inmate Calling Services*, 82 Fed. Reg. 12182 (Mar. 1, 2017).

³ DA 17-209, *Wireline Competition Bureau Announces Due Dates for Inmate Calling Services Information Collections and Consumer Disclosure Requirements* (Mar. 2, 2017).

⁴ FCC rules should be read and enforced in harmony with the text of the underlying order. *E.g.*, *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1360 (D.C. Cir. 1993) (reversing agency’s dismissal of applications of cellular licenses as being “premature”).

2017 and cover the time period from January 1, 2016 to December 31, 2016.

But the Reporting Rule was *not* approved by OMB in 2016. It was approved on January 9, 2017, and that approval was not published until March 1, 2017. 82 Fed. Reg. 12182-83. By the plain language of Paragraph 268, the time period for reporting begins January 1, 2017, and reports are due April 1, 2018.

The Bureau's *sua sponte* decision to set a deadline of June 1 contravenes the full Commission's language. Securus therefore moves the Commission to issue an order that comports with its previous decision by setting April 1, 2018, as the deadline for the first annual reports which will cover data for calendar year 2017.

II. THREE COMPONENTS OF THE REPORTING RULE REMAIN UNDER APPEAL, THE OUTCOME OF WHICH WILL SIGNIFICANTLY CHANGE THE RULE'S APPLICATION

The Reporting Rule requires the assembly of data regarding several aspects of ICS, including the number of intrastate ICS calls, the site commissions provided to law enforcement facilities, and the number of inmate communications conducted via video. These requirements comprise a large part of the Reporting Rule. But the ICS rules underlying these requirements remain under review at the U.S. Court of Appeals for the D.C. Circuit in the case captioned *Global Tel*Link, et al. v. FCC*, No. 15-1461 and consolidated cases (D.C. Cir. filed Dec. 18, 2015).

The ICS Petitioners have challenged the FCC's jurisdiction to regulate intrastate telephone calls (*e.g.*, Rule 64.6010). And just before oral argument was heard on February 6, 2017, the FCC informed the Court of Appeals that it will not defend the previous Commission's attempt to regulate intrastate telecommunications. Letter from David M. Gossett, Office of General Counsel, FCC, to Mark J. Langer, Clerk (Jan. 31, 2017). Thus, the question whether the

FCC can impose any sort of regulation on intrastate ICS⁵ remains sharply in question and could well result in the *vacatur* of all intrastate-related portions of the *Second Report and Order*.

The ICS Petitioners also have challenged the FCC's jurisdiction to impose a reporting requirement for video conferencing used by inmates (Rule 64.6060(a)(4)). The FCC has admitted that these services (Securus calls them "Video Visitation") are not ICS. *Second Inmate Rate Order* ¶ 296 & n.1029.

Finally, the scope of what constitutes "site commissions" (Rule 64.6000(t)) is also under review at the D.C. Circuit. Rule 64.6000 purports to include non-monetary payments in the definition of "site commission," which would include software and services that correctional facilities use to preserve the public safety. The definition unlawfully encroaches on the penological authority of law enforcement agencies and interferes with prison operations.

Almost half of the Reporting Rule could be displaced or obviated by the D.C. Circuit. But the present reporting deadline, because of the enormous amount of data required (*see* Section III. below), would require Securus to begin compiling data now. That work would be a burdensome waste if the D.C. Circuit agrees that the FCC overstepped its bounds as to intrastate service, non-monetary site commissions, and/or Video Visitation.

In addition to the risk of needless waste is the need for the FCC to harmonize, and likely clarify, the Reporting Rule after the D.C. Circuit issues its opinion on the rules under review. The text of Rule 64.6060 in all likelihood will require amendment by virtue of that opinion. Amending Rule 64.6060 will take time, and a June 1 deadline does not afford a period long enough to enable both the amendment of Rule 64.6060 and the compilation and assembly of

⁵ Reporting rules such as Rule 64. 6060 are a form of regulation. *E.g., Cellco Partnership v. FCC*, 357 F.3d 88, 101-102 (D.C. Cir. 2004).

data.

For these reasons, the Commission should abide by its previous holding and order ICS carriers to provide their first annual reports on April 1, 2018, covering the 2017 calendar year.

III. AT A MINIMUM, THE COMMISSION SHOULD EXTEND THE JUNE 1 DEADLINE FOR A REASONABLE PERIOD

The Federal Register notice published on March 1 states that the first annual reports “are due March 1, 2017.” 82 Fed. Reg. at 12183. Plainly that statement was in error. The Bureau immediately extended the deadline to June 1, which is 60 days from the date which should have appeared in the Federal Register – April 1, 2017. Under the circumstances, June 1 deadline is far too soon a due date, a conclusion supported by the fact that the Commission previously decided that Rule 64.6060 would not kick in until the calendar year *after* OMB approval, with reports due the *following* April 1. In other words, the Commission plainly wanted ICS carriers to have several months – perhaps a year – in which to assemble, assess, compile, and submit the data.

The Reporting Rule is both extremely broad and extremely detailed. For each facility Securus serves, it must compile and report data that includes minutes of use (all call jurisdictions), rates, the number and amounts of “Ancillary Fees” imposed, the number of TTY calls, and the number of purportedly “dropped” TTY calls. 47 C.F.R. § 64.6060(a). Securus served approximately 2,000 facilities in 2016. After culling out this data from each of those 2,000 facilities, Securus then must calculate the sum of these data points for facilities of each “type and size.” 47 C.F.R. § 64.6060(a). The task is enormous.

It is likely that Paragraph 268 was written as it was due precisely to the enormity of the task. The Commission could have stated, for example, that the first annual reports would be due 90 days after OMB approval. Instead, the Commission decided that the Reporting Rule would

be effective only for the calendar year following OMB approval, with reports due the next April 1, thus building in several months for ICS carriers to compile and analyze the data.

The new June 1 deadline set by the Bureau does not reflect the Commission's decision in the *Second Report and Order* that ICS providers must have sufficient time to file their first annual reports. If the instructions of Paragraph 268 – which make April 1, 2018 the first deadline – are not to be maintained as written, then at a minimum a reasonable extension of time should be granted. Securus suggests that September 1, 2017, for data covering calendar year 2016, would be the appropriate new deadline given the amount of data that Rule 64.6060 demands and the present lack of finality in the underlying ICS rules.

CONCLUSION

For all these reasons, the Commission should hold that ICS providers should file their first annual report on April 1, 2018, for the calendar year beginning January 1, 2017. In the alternative, at a minimum, the Commission should extend the deadline for reporting 2016 data until September 1, 2017.

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Respectfully submitted,

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